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Message Text

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FOR GILMORE

FOLLOWING REPEAT LISBON 765 ACTION SECSTATE DTD 27 JAN

QTE

LIMITED OFFICIAL USE LISBON 0765

E.O. 11652: N/A
TAGS: PFOR, PINT, US, PO
SUBJ: BIB/RFE NEGOTIATIONS -- JOINT CONTRACT DRAFT

1. RARET MANAGEMENT, DEPUTY TO MASS COMMUNICATIONS SECRETARY OF STATE JOAO SOARES LOURO AND DCM JAN. 24-27 JOINTLY DEVELOPED A NEW RARET CONTRACT FOR AD REFERENDUM CONSIDERATION BY BOTH SIDES. (FYI: GOP DOES NOT PLAN TO DISSEMINATE CONTRACT ONCE IT IS SIGNED.)
EMBASSY COMMENTS WILL FOLLOW ESPTEL.

2. HEREWITH INFORMAL EMBASSY TRANSLATION OF PORTUGUESE-LANGUAGE AGREED-UPON DRAFT, WHICH GOP ON JANUARY 27 CIRCULATED TO INTERESTED MINISTRIES: BEGIN QUOTE.
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ARTICLE 1: THE "SOCIEDADE ANONIMA DE RADIO-TRANSMISSAOGN S.A.R.L., RARET, "IS AUTHORIZED TO MAINTAIN, EXPAND, AND OPERATE ON PORTUGUESE TERRITORY A RADIO BROADCASTING SERVICE ON ALLOCATED BANDS IN DECAMETRIC WAVES, TO BE USED FOR THE BROADCASTING AND/OR REBROADCASTING OF PROGRAMS ABROAD OF RADIO FREE EUROPE/RADIO LIBERTY, INC., OR OF ANY OTHER ENTERPRISE WHICH MAY SUCCEED IT.

PARA 1: EXCEPT AS PROVIDED IN THE BODY OF THIS ARTICLE, ANY TRANSFER OF RIGHTS OR OF PARTIAL POSITIONS GRANTED BY THIS CONTRACT TO

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RARET SHALL ALWAYS BE SUBJECT TO AGREEMENT OF THE PORTUGUESE STATE.

PARA 2: RARET IS AUTHORIZED FURTHER TO MAINTAIN OR EXPAND A SYSTEM OF RADIO COMMUNICATIONS FOR SERVICING INTERNAL BUSINESS AND PROGRAMS BETWEEN THE VARIOUS LOCALITIES WHERE ITS SERVICES ARE LOCATED.

PARA 3: THE OPERATION REFERRED TO IN THE BODY OF THIS ARTICLE SHALL HAVE NO COMMERCIAL PURPOSES NOR SHALL IT PRODUCE ANY PROFITS, AND IT SHALL BE SUBJECT TO PORTUGUESE LAWS.

ARTICLE 2: FOR THE OPERATION OF THE SERVICE WHICH IS THE PURPOSE OF THIS CONCESSION, RARET MAY UTILIZE THE FOLLOWING PROPERTY:

PARA 1: BELONGING TO THE "EMPRESA PUBLICA CORREIOS E TELECOMMUNICACOES DE PORTUGAL (E.P.C.T.P.)":

(A) EQUIPMENT WHICH BELONGED TO RARET AND IS NOW PART OF THE PATRIMONY OF THE "EMPRESA PUBLICA CORREIOS E TELECOMUNICACOES DE PORTUGAL," IN ACCORDANCE WITH THE INVENTORY HELD BY THE "DIRECCAO DOS SERVICOS RADIO-ELECTRICOS." RARET STATES THAT IT HAS KNOWLEDGE OF THAT INVENTORY AND RECOGNIZES ITS VALIDITY;

(B) EQUIPMENT WHICH RARET MAY ACQUIRE TO REPLACE

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THAT MENTIONED IN THE PREVIOUS ITEM, WHICH, UNDER THE TERMS OF THIS CONTRACT, IS TO BE REMOVED FROM THE INVENTORY AND DISPOSED OF.

(C) LAND AND BUILDINGS ACQUIRED BY RARET WHICH ARE DESCRIBED IN THE INVENTORY REFERRED TO IN ITEM (A) ABOVE.

PARA 2: BELONGING TO RARET: ALL OTHER EXISTING PROPERTY, NAMELY:

(A) FOUR 250KW TRANSMITTERS, REFERRED TO IN THE TEXT OF ART. 2 IN THE CONCESSION CONTRACT DATED APRIL 30, 1963;

(B) NEW TRANSMITTERS AS WELL AS ALL EQUIPMENT AND ELECTRIC AND RADIO-ELECTRIC AND OTHER INSTALLATIONS WHICH RARET, FOR WHATEVER REASON, MAY ACQUIRE FOR PURPOSES SET FORTH IN THE PRESENT CONTRACT;

(C) ALL LAND AND BUILDINGS WHICH RARET MAY ACQUIRE IN ORDER TO CARRY OUT ITS ACTIVITIES;

(D) ALL TUBES EXTANT OR WHICH MAY BE ACQUIRED.

PARA 3: BELONGING TO THIRD PARTIES:

ALL EQUIPMENT WHICH RARET MAY LEASE OR OTHERWISE ACQUIRE, WHICH IN ALL CIRCUMSTANCES REMAINS THE PROPERTY OF WHOEVER OWNS IT.

SOLE PARA: THE PARTY OF THE SECOND PART (RARET),

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IS HEREBY AUTHORIZED TO COMBINE TWO OR MORE TRANSMITTERS MENTIONED IN THE TEXT OF THIS ARTICLE IN ORDER TO OBTAIN GREATER TRANSMITTING POWER.

ARTICLE 3: INSTALLATION OF TRANSMITTERS AND EQUIPMENT REFERRED TO IN ART. 2, TO THE DEGREE THIS EXCEEDS THE AUTHORIZATION ALREADY GRANTED, AND ESTABLISHMENT OF OTHER RADIO-ELECTRIC INSTALLATIONS FOR RECEIVING OR TRANSMITTING, OR THE MODIFICATION OF EXISTING EQUIPMENT, SHALL ALWAYS REQUIRE PRIOR TECHNICAL APPROVAL OF THE "DIRECCAO DOS SERVICOS RADIOELECTRICOS DA E.P.C.T.P." NO SUCH INSTALLATIONS SHALL BE PERMITTED

TO ENTER INTO SERVICE UNTIL THE E.P.C.T.P. SHALL HAVE CONDUCTED INSPECTIONS DEEMED APPROPRIATE, AND SHALL HAVE GRANTED THE RESPECTIVE LICENSES, SHOULD LICENSES BE REQUIRED.

ARTICLE 4: NOTWITHSTANDING THE TERMS OF THIS CONTRACT, RARET SHALL BE SUBJECT TO ALL LEGAL PROVISIONS AND REGULATIONS, BOTH NATIONAL AND INTERNATIONAL, AS REGARDS RADIOELECTRIC INSTALLATIONS AND TO THE SERVICE INSTRUCTIONS GIVEN IT BY THE "SERVICOS RADIO-ELECTRICOS DA E.P.C.T.P." IN ACCORDANCE WITH THIS CONTRACT OR PORTUGUESE LAW.

ARTICLE 5: THE FREQUENCIES TO BE UTILIZED FOR THE BROADCASTS SHALL BE THOSE WHICH ARE AUTHORIZED AT PRESENT. ADVANCE NOTICE OF ALL NEW FREQUENCIES SHALL BE SUBMITTED ON A PERIODIC BASIS TO THE "DIRECCAO DOS SERVICOS RADIOELECTRICOS DA E.P.C.T.P.," IN ACCORDANCE WITH INTERNATIONAL REGULATIONS IN FORCE.

ARTICLE 6: RARET SHALL IDENTIFY ITS RADIO BROADCASTS BY THE GENERAL DESIGNATION OF RADIO FREE EUROPE AND/OR RADIO LIBERTY OR BY ANY OTHER DESIGNATION PREVIOUSLY AGREED UPON WITH THE "DIRECCAO DOS SERVICOS RADIO-ELECTRICOS DA E.P.C.T.P."

SOLE PARA: RARET SHALL NOT BROADCAST, WITHOUT PRIOR AUTHORIZATION, THE STATION CALL LETTERS IN THE DOMESTIC (PORTUGUESE) SERIES WHICH THE "DIRECCAO DOS SERVICOS RADIOELECTRICOS DA E.P.C.T.P." ASSIGNS EACH RARET BROADCAST FREQUENCY--WHETHER FOR MAINTAINING ITS OWN RECORDS, FOR EASE OF INSPECTION OR EVEN FOR CORRESPONDENCE WITH RARET.

ARTICLE 7: WHENEVER IT DEEMS CONVENIENT, THE "DIRECCAO DOS SERVICOS RADIOELECTRICOS DA E.P.C.T.P." MAY INSPECT THE RADIO-ELECTRIC INSTALLATIONS OF RARET AND THERE PERFORM WHATEVER TESTS IT CONSIDERS NECESSARY TO VERIFY THAT THE OPERATION MEETS APPLICABLE PRESCRIBED REGULATIONS.

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ARTICLE 8: EVERY SIX MONTHS RARET SHALL FURNISH THE "DIRECCAO DOS SERVICOS RADIOELECTRICOS DA E.P.C.T.P." THE RESULTS OF SPECIFIED TESTS CARRIED OUT IN ITS RADIO ELECTRIC INSTALLATIONS, WHICH VERIFY THE QUALITY AND OTHER CHARACTERISTICS OF ITS BROADCASTS.
ARTICLE 9: RARET AGREES TO MAINTAIN UP-TO-DATE THE FOLLOWING PERMANENT INVENTORIES: (A) OF E.P.C.T.P. - OWNED EQUIPMENT, (B) OF RARET-OWNED EQUIPMENT, AND (C) OF THIRD PARTY-OWNED EQUIPMENT.

PARA 1: INVENTORIES ON E.P.C.T.P. AND RARET PROPERTY SHALL SPECIFY THE PURCHASE PRICE OF EACH ITEM.

PARA 2: EVERY SIX MONTHS RARET SHALL PROVIDE THE "DIRECCAO DOS SERVICOS RADIOELECTICOS DA E.P.C.T.P." WITH A COPY OF THE INVENTORIES MENTIONED IN ITEMS (A) AND (B) OF THIS ARTICLE.

PARA 3: THE "DIRECCAO DOS SERVICOS DA E.P.C.T.P." RESERVES THE RIGHT TO PERFORM THE INSPECTIONS IT DEEMS APPROPRIATE IN ORDER TO CONFIRM THE CORRECTNESS OF THE INVENTORIES MENTIONED IN THIS ARTICLE.

PARA 4: RARET SHALL BE RESPONSIBLE FOR MAIN- TAINING IN THE SAME CONDITION AS IT IS AT PRESENT ALL EQUIPMENT INCLUDED IN THE PERMANENT INVENTORY WHICH BELONGS TO THE E.P.C.T.P.

PARA 5: ANY ADDITION TO OR REDUCTION FROM THE PATRIMONY REFERRED TO IN ITEMS (A) AND (B) OF ARTICLE 2, PARA. 1, OF THIS CONTRACT AS REGARDS EQUIPMENT OR OTHER PROPERTY MUST ALWAYS BE COMMUNICATED TO E.P.C.T.P. IN ACCORDANCE WITH PARA. 2 OF THIS ARTICLE TO MEET THE INTENT OF GENERAL LAW AND THIS CONTRACT.

ARTICLE 10: RARET SHALL BE OBLIGED TO:

1. OBSERVE THE MORAL PRINCIPLES OF THE PORTUGUESE NATION AND RESPECT THE INTERNATIONAL PRACTICES

FOLLOWED BY THE PORTUGUESE STATE;

2. PROVIDE FOR A PORTUGUESE GOVERNMENT DELEGATE, WHO SHALL BE ACCREDITED TO THE RARET MANAGEMENT AS PROVIDED BY LAW;

3. MAKE SOUND RECORDINGS OF ALL ITS RADIO BROADCASTS AND KEEP THEM AVAILABLE FOR THE "DIRECCAO DOS SERVICOS RADIOELECTRICOS DA E.P.C.T.P." FOR A PERIOD OF SIXTY DAYS, FOR ANY INSPECTION WHICH THAT AGENCY MAY DEEM APPROPRIATE;

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4. PAY THE FEES WHICH GENERAL LEGISLATION HAS ESTABLISHED FOR RADIOELECTRIC INSTALLATIONS;
5. SEND AN ANNUAL REPORT FROM THE BOARD OF DIRECTORS TO THE E.P.C.T.P.
6. RESTRICT, AS MUCH AS POSSIBLE, THE UTILIZATION OF FOREIGN PERSONNEL WITH THE NUMBER AND RESPECTIVE CATEGORIES OF SUCH PERSONNEL BEING SUBJECT TO PORTUGUESE LAW;
7. GRANT "RADIODIFUSAO PORTUGUESA, E.P." (RDP) 28 HOURS OF BROADCASTING TIME PER WEEK, USING THE EXTANT ANTENNA SYSTEM. TIMING OF THESE TRANSMISSIONS SHALL BE AGREED UPON BY THE TWO PARTIES IN A MANNER SO AS NOT TO INTERFERE WITH RARET'S REGULAR BROADCAST SCHEDULE. BROADCASTS FOR RDP SHALL BE HANDLED EXCLUSIVELY BY RARET PERSONNEL, AND THE FREQUENCIES AND CALL SIGNS UTILIZED SHALL BE SUCH THAT THEY CANNOT BE CONFUSED WITH THOSE UTILIZED BY RARET;
8. COMPLY WITH THE AGREEMENT ESTABLISHED WITH RARET WORKERS TO WHICH ADDENDUM NO. 2, AN ANNEX TO THIS CONTRACT, REFERS.

ARTICLE 11: IN THE EVENT OF A GRAVE NATIONAL EMERGENCY, AND RESPECTING CONSTITUTIONAL PRINCIPLES, THE PORTUGUESE GOVERNMENT MAY TEMPORARILY SUSPEND OPERATION OF RARET TRANSMITTERS, BUT ONLY IF AN IDENTICAL MEASURE IS APPLIED TO ALL OTHER TRANSMITTER STATIONS LOCATED ON PORTUGUESE TERRITORY --
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WITHOUT OBLIGATION FOR PAYMENT OF ANY INDEMNIFICATION WHATSOEVER.

ARTICLE 12: IN THE EVENT OF A GRAVE NATIONAL EMERGENCY, THE PORTUGUESE GOVERNMENT RESERVES THE RIGHT TO REQUISITION FOR ITS OWN USE ALL OR PART OF THE RARET RADIOELECTRIC INSTALLATIONS. THE LATTER WILL BE COMPENSATED AT A LEVEL CORRESPONDING TO THE OPERATING EXPENDITURES OF THE INSTALLATIONS REQUISITIONED.

ARTICLE 13: THIS CONTRACT SHALL REMAIN IN FORCE FOR FIFTEEN YEARS, COMMENCING ON THE DATE OF SIGNATURE.

PARA 1: THIS CONTRACT PERIOD SHALL BE EXTENDED, HOWEVER, FOR TIME PERIODS EQUAL TO THE SUM OF ALL PERIODS OF SUSPENSION OF OPERATIONS UNDER THE TERMS OF ARTICLES 11 AND 12.

PARA 2: THIS CONTRACT, AFTER IT HAS BEEN IN FORCE FOR TEN YEARS UNDER THE TERMS OF THIS ARTICLE AND ITS PARA. 1, MAY BE TERMINATED BY EITHER PARTY UPON EIGHTEEN MONTHS ADVANCE NOTICE, IN WHICH CASE RARET SHALL BE RELEASED FROM THE OBLIGATION OF PAYING THE INSTALLMENTS NOT YET DUE UNDER TERMS OF ART. 17.

ARTICLE 14: AT THE END OF THE PERIOD REFERRED TO IN

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THE TEXT OF THE PREVIOUS ARTICLE, POSSIBLY EXTENDED
UNDER THE TERMS OF ITS PARA. 1, THE PROPERTY MENTIONED
IN ARTICLE 2, PARA. 1, ITEMS (A) AND (B), SHALL REVERT
TO THE E.P.C.T.P. FURTHER, ITEMS (A) MENTIONED IN
ARTICLE 2, PARA. 2 SHALL AT THAT TIME BECOME THE
PROPERTY OF RDP.
ARTICLE 15: IF THE CONTRACT HAS BEEN TERMINATED
UNDER THE TERMS OF ARTICLE 13, PARA 2, THE PORTUGUESE
STATE MAY ACQUIRE FROM RARET THE PROPERTY MENTIONED
IN ARTICLE 2, PARA 2, ITEMS (B), (C) AND (D) BY
PAYING THEIR FAIR VALUE, AS ESTABLISHED BY MUTUAL
AGREEMENT. IF AN AGREEMENT CANNOT BE REACHED, THE
VALUE WILL BE ESTABLISHED BY THREE ARBITRATORS
APPOINTED UNDER THE TERMS OF ARTICLE 1513, NO. 3
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AND SUCCEEDING NUMBERS OF THE PORTUGUESE CIVIL PRO-
CEEDINGS CODE.
SOLE PARA: SHOULD THE PORTUGUESE STATE NOT WISH
TO AVAIL ITSELF OF THE PRIVILEGE PROVIDED IN THE
TEXT OF THIS ARTICLE, RARET MAY DISPOSE OF THE
PROPERTY MENTIONED THEREIN, WITHIN THE LIMITATIONS
OF APPLICABLE LEGAL CONTRACTUAL PROCEDURES.
ARTICLE 16: THE TWO PARTIES AGREE TO INITIATE
NEGOTIATIONS AT THE END OF THE THIRTEENTH YEAR OF
THIS CONTRACT, WITH A VIEW TO EVENTUAL RENEWAL OF THE
PRESENT CONCESSION.
ARTICLE 17: IN ADDITION TO THE FEES CITED IN ARTICLE
10, PARA 4, RARET ALSO SHALL PAY THE PORTUGUESE STATE
THE AMOUNT OF U.S. $3,000,000,00 (THREE MILLION
AMERICAN DOLLARS) FOR THE FIFTEEN-YEAR
CONCESSION, IN EQUAL ANNUAL INSTALLMENTS OF U.S.
$200,000.--(TWO HUNDRED THOUSAND DOLLARS) TO BE
PAID AS FOLLOWS:
(A) THE FIRST INSTALLMENT UPON SIGNATURE OF THE CONTRACT;
(B) THE REMAINING INSTALLMENTS WITHIN THE FIRST
TEN DAYS OF EACH YEAR THE CONTRACT REMAINS IN FORCE:
PARA 1: THE ANNUAL INSTALLMENT WAS CALCULATED
ON THE BASIS OF EXISTING TRANSMISSION POWER
TOTALING 1,835 KW. IN NO EVENT SHALL THE ANNUAL
INSTALLMENT PAYMENT BE LOWER.
PARA 2: AN INCREASE IN INSTALLED TRANSMISSION
POWER SHALL AUTOMATICALLY AND PROPORTIONATELY IN-
CREASE THE ANNUAL INSTALLMENTS PAID BY RARET,
ON THE BASIS OF THE PRESENT PRICE/TRANSMITTER
POWER RELATIONSHIP.
PARA 3: EACH INCREASE OF THE ANNUAL INSTALLMENTS
SHALL FALL DUE ON THE DATE OF PAYMENT OF THE NEXT
ANNUAL INSTALLMENT, WITH THE INCREASE CALCULATED
ON THE BASIS OF CALENDAR DAYS STARTING WITH THE
FIRST DAY, INCLUSIVE, THE INCREASED TRANSMITTER

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POWER CAN LEGALLY BE USED.
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ARTICLE 18: RARET MAY ERECT RADIOELECTRIC INSTALLA-
TIONS ON LAND OR BUILDINGS RENTED FROM A THIRD PARTY.
THIS PROCEDURE SHALL BE SUBJECT, HOWEVER, TO THE
TECHNICAL APPROVAL OF THE "DIRECCAODOS SERVICOS
RADIOELECTRICOS DA E.P.C.T.P." IN ACCORDANCE WITH
LAW AND REGULATIONS.

PARA 1: UNDER TERMS OF THIS ARTICLE, RARET IS
OBLIGED TO INCLUDE IN THE RENTAL CONTRACTS A
CLAUSE WHEREBY THE LANDLORD SPECIFICALLY AUTHORIZES
THE TRANSFER OF THE LESSOR'S RIGHTS TO THE
E.P.C.T.P., IF THE LATTER SO DESIRES, WHEN
THE PRESENT CONTRACT TERMINATES.

PARA 2: SHOULD ANY RENTAL CONTRACT INCLUDE A
CLAUSE REQUIRING DEMOLISHING OF BUILDINGS OR
DISMANTLING OF INSTALLATIONS, SUCH ACTIONS SHALL
BE TAKEN AT THE EXPENSE OF THE PORTUGUESE STATE
IF THE RENTAL HAS REVERTED TO THE LATTER.
OTHERWISE, THOSE EXPENSES SHALL BE MET BY RARET.

ARTICLE 19: IT IS UNDERSTOOD THAT THE FINANCIAL
OBLIGATIONS OF RARET RESULTING FROM THIS CONTRACT
SHALL BE ASSUMED BY THE BOARD FOR INTERNATIONAL
BROADCASTING, WHICH WAS ESTABLISHED BY LAW OF THE
UNITED STATES OF AMERICA FOR THE PURPOSE OF GRANTING
U.S. GOVERNMENT FUNDS TO RADIO FREE EUROPE/RADIO LIBERTY,
INC. FOR THE CONDUCT OF ITS ACTIVITIES, INCLUDING
RARET.
ARTICLE 20: THE PRESENT CONTRACT CONCELS AND SUPER-
SEDES THE ENTIRE TEXT OF THE CONCESSION CONTRACT OF
APRIL 30, 1963, AND THE CONTRACT EXTENSION OF
APRIL 30, 1973.
ARTICLE 21: A LUMP SUM OF U.S. $400.000.00 (FOUR
HUNDRED THOUSAND AMERICAN DOLLARS), A SPE
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